

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2294 of 1992

For Approval and Signature:

Hon'ble MR.JUSTICE R.K.ABICHANDANI

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1. Whether Reporters of Local Papers may be allowed : YES
to see the judgements?
 2. To be referred to the Reporter or not? : YES
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge? : NO

RASHMIBEN C BODANI

Versus

PRESIDENT/ ADARSH EDUCATION SOCEITY

Appearance:

MR KETAN A DAVE for Petitioner

NOTICE SERVED for Respondent No. 1

CORAM : MR.JUSTICE R.K.ABICHANDANI

Date of decision: 01/12/2000

ORAL JUDGEMENT

The petitioner who was earlier employed as an Assistant Teacher in the Primary School run by the respondent Trust and whose services were terminated on 30th April, 1979, challenges the decision of the Primary Education Tribunal dated 25.2.1992, rejecting her application No. 5/92 on the ground that the application was not maintainable before the Tribunal since her services were terminated prior to the coming into force of the provisions of Section 40E of the Bombay Primary Education Act. The

provisions of Section 40E laying down that the disputes between the manager and teacher of the nature referred to therein will be decided by the Tribunal constituted under Section 40F of the Act were added by Act No.22 of 1986, published in GGG Part IV E034-2 dated 13.9.1986. The Tribunal also held that since this was not a suit or proceeding which was transferred from any Civil Court under Section 40G(2) of the said Act, it could not entertain the same.

3. This matter has a chequered history. The petitioner had earlier resorted to the industrial forum, but her reference came to be rejected on 20.11.1985, on the ground that being a teacher she was not a workman. It appears that she lost even in a writ petition which was rejected on 27.11.1991 as per the decision at Annexure "C" to the petition. The High Court, following the decision of the Supreme Court in A. Sundarambal Vs. Government of Goa, Daman & Diu, reported in AIR 1989 S.C 1700, held that a school teacher would not be a workman within the meaning of Section 2(s) of the Industrial Disputes Act. Therefore, she made an application before the Education Tribunal.

4. Section 40E of the said Act which came to be inserted in the said Act alongwith other provisions of Chapter VIIA provides that where there is any dispute between the manager of a recognized private primary school and a teacher in service of such school, which is connected with the conditions of service of such teacher, the manager or, as the case may be, the teacher, may make an application to the Tribunal constituted under Section 40F for the decision of the dispute. Section 40F provides that there shall be constituted by the State Government by an order published in the official Gazette one or more Tribunals for the purpose of Chapter VIIA. Under sub-section (4) of Section 40F, it shall be the duty of the Tribunal: (i) to entertain and decide applications made to it raising disputes of the nature referred to in Section 40E, (ii) to deal with and decide all Suits and proceedings transferred to it under sub-section (2) of Section 40G and (iii) to entertain and decide appeals made under sub-section (5) of Section 40B of the Act. The jurisdiction of Civil Court was simultaneously barred by Section 40G(1), which provided that no Civil Court shall have jurisdiction to settle, decide or deal with any question which is, by or under Chapter VIIA, required to be settled, decided or dealt with by the Tribunal. As regards the pending matters in the Civil Courts, sub-section (2) of Section 40G provided that all Suits and proceedings between the manager of a

recognized private primary school and a teacher in service, of such school relating to disputes connected with the conditions of services of such teacher, which are pending in any Civil Court on the date of the commencement of the Bombay Primary Education (Gujarat Amendment) Ordinance, 1986, shall be transferred to and continued before the Tribunal. However, the execution proceedings and appeals arising out of the decrees or orders passed by such Courts before the commencement of the amendment Ordinance were required to be disposed of as if the amendment Act had not been passed.

5. The aforesaid provisions while ousting the jurisdiction of the Civil Court in respect of any question which is required to be settled, decided or dealt with by the Tribunal and providing for transfer of pending Civil Suits and proceedings to the Tribunal, enjoin a duty on the Tribunal to entertain and decide all disputes between the manager of a recognized private primary school and teacher which are connected with the conditions of services of such teacher. They also enjoin upon the Tribunal a duty to deal with and decide all applications and proceedings made or transferred to it under sub-section (2) of Section 40G. Finally they enjoin a duty on the Tribunal to entertain and decide appeals made under sub-section (5) of Section 40B. There is no indication in any of these provisions that if a teacher has not raised the dispute by filing a Suit or other proceedings before a Civil Court before the coming into force of the Ordinance or the above provisions of the Act, such teacher cannot thereafter raise the same before the Tribunal. The effect of the approach adopted by the Tribunal for not entertaining the petitioner's application on the ground that it was not a proceeding transferred from a Civil Court and therefore it cannot entertain it, would leave innumerable teachers who had not prior to the coming into force of the Ordinance or the Act and the constitution of the Tribunal for the purpose of adjudicating such disputes, raised disputes which are triable by the Tribunal, in a lurch. Such a startling result could have never been intended by the legislature because the affected teacher can, after the new provisions, neither approach the Civil Court due to the ouster of its jurisdiction, nor can such teacher get relief from the Tribunal, since there was no civil proceedings pending which could be transferred to the Tribunal under Section 40G(2). The Tribunal has over-looked the fact that right to approach the Tribunal was not confined only to those who had filed proceedings before the Civil Court prior to coming into force of the Ordinance and that even teachers who did not approach the

Civil Court earlier and wanted to approach the Tribunal on its constitution could make an application raising the dispute as contemplated by Section 40E of the said Act. The question of jurisdiction and the question of limitation are entirely different aspects of the matter. Since the teacher could have filed an application before the Tribunal even in respect of her termination order issued prior to the coming into force of the Ordinance or the Act, the Tribunal was duty bound to entertain such application under Section 40F(4) and in such a case it was wholly irrelevant whether there were proceedings pending in the Civil Court, which is just one of the three categories of matters required to be decided by the Tribunal. The Tribunal, therefore, has improperly refused to exercise jurisdiction vested in it by law by not entertaining the application of the petitioner. The impugned award dated 21.2.1992 made by the Gujarat Primary Education Tribunal in Application No.5/92 is therefore hereby set aside and the matter is remanded to the Tribunal for a fresh decision in light of the aforesaid provisions of the Act and the present judgement. Rule is made absolute accordingly with no order as to costs.

*/Mohandas